

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

EDWARD BENTON GLASS, #049745

§

§

v.

§

CIVIL ACTION NO. 2:23-cv-053

§

UPSHUR CO. D.A. OFFICE, ET AL.

§

ORDER OF DISMISSAL

Plaintiff Edward Benton Glass, an inmate formerly confined at the Upshur County Jail proceeding *pro se* and *in forma pauperis*, filed this numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge Roy S. Payne for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On April 19, 2024, Judge Payne issued a Report, (Dkt. #26), recommending that Plaintiff's lawsuit be dismissed, without prejudice, for his failure to comply with an order of the Court and to prosecute his case. A copy of this Report was mailed to Plaintiff at his last-known address, with an acknowledgment card. The docket reflects that—much like other mail sent to Plaintiff from the Court—the Report was returned as undeliverable, (Dkt. #27). Plaintiff has neither filed objections nor communicated with the Court since the Report issued.

Because objections to Judge Payne's Report have not been filed, Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243

(1989) (holding that where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Plaintiff's failure to file an updated address, given that the mail was returned several times in this case, evinces the correctness of the Magistrate Judge's Report. In the interests of justice, the court will suspend the statute of limitations for a period of sixty days in accordance with *Campbell v. Wilkinson*, 988 F.3d 798, 801 n.1 (5th Cir. 2021) (explaining that "[w]here further litigation of [a] claim will be time-barred, a dismissal without prejudice is no less severe a sanction than a dismissal with prejudice, and the same standard of review is used.""). Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge, (Dkt. #26), is **ADOPTED** as the opinion of the Court. Further, it is

ORDERED that the above-styled civil proceeding is **DISMISSED**, without prejudice, for Plaintiff's failure to comply with an Order of the Court and to prosecute his own case. The statute of limitations is hereby **SUSPENDED** in this case for sixty (60) days from the date of Final Judgment. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So Ordered this

May 22, 2024



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE